

**The Maytag Repairman
The Art of War
&
The Practice of Business Law**

**By Donald W. Hudspeth
Law Offices of Donald W. Hudspeth PC**

For many years The Maytag Corporation ran appliance ads featuring the Maytag Repairman who was lonely or bored because he had nothing to do. According to the ad customers did not need to call for repair service due to the high quality of the Maytag appliances. I have always admired this commercial and use it here as a spring board to talk about quality of product and business law practice.

Quality Now Avoids Service Calls Later

In our law office we generally refer to this phenomenon of quality legal work reducing the demand for dispute resolution or litigation as the “call not received.” When legal contracts or other documents are properly drafted and tailored to the client¹ bad things that could happen tend not to happen. For example, the former partner or employee who is bound by a well written confidentiality and non-compete agreement (“Agreement”) cannot lawfully become the “wolf inside your door” and leave the company to target clients. Without such an Agreement in place the partner or employer may have few options to quell such competitive conduct and the options remaining are more difficult to apply and prove than a relatively simple breach of contract suit.

Being contractually bound to and by a written agreement will cause many persons who would otherwise assert or defend their right to certain conduct to forgo the claim or conduct. This is particularly true if and after the protagonist confers with legal counsel. The malfeasors (wrongdoers) might not believe our client or this firm, but, typically, they will follow the advice of their own counsel. And, with quality legal documents in place there is a good chance that opposing counsel will advise the client not to breach them, to moderate the course of conduct

¹ For more on this subject please see the article “The Falsity of Forms” under the Publications tab on the firm website or send an email to thefirm@azbuslaw.com to request a copy.

or to take corrective action.² Opposing counsel knows that in a proper case the court will:

- A. Enjoin (or order a stop to) the targeted activity,
- B. Award damages for the breach (usually some amount agreed upon in advance in the Agreement which may be all revenues earned in violation of the Agreement) and may
- C. Award damages against any employer or other third party who knowingly conspires with and accepts the benefit of the ex-partner's or ex-employee's unlawful breach of the covenants of confidentiality or non-competition (collectively, "remedies.")

The combination of good contracts, legal counsel and available remedies should cause many protagonists to forgo or to cease a course of conduct. In the absence of bad conduct the client has no reason to call our firm for legal representation.

For a more enlightened view of the subject please consider the following from Sun Tzu's The Art of War:

A physician who belonged to a family of healers in ancient China was once asked which one of his three brothers applied the most wisdom in the healing arts. The famous doctor of ancient China replied,

"My eldest brother sees the spirit of sickness and removes it before it takes shape, so his name does not get out of the house."

"My second brother cures sickness when it is still extremely minute, so his name does not get out of the neighborhood."

"As for me, I puncture veins, prescribe potions, and massage skin, so from time to time my name gets out and is heard among the lords."

{From Sun Tzu's The Art of War. Translated by Thomas Cleary. Shambhala, Boston and London, 1991.}

This ancient Chinese wisdom sums up the paradox of fame attributed to practitioners of medicine. The translator of Sun Tzu's classic goes on to

² For more on this subject please see the article "Let Us Now Praise Opposing Counsel" in which I make the point that an attorney, even an excellent attorney on the other side is not necessarily a bad thing because a knowledgeable and experienced attorney "knows the score" and does not mislead the client with incorrect or overly-optimistic positions. This article is available on our website at azbuslaw.com or this office at thefirm@azbuslaw.com.

explain that while the healing art and the art of war may appear to be poles apart, they involve common strategies, which draw on ancient wisdom. Sun Tzu, the ancient Chinese general mentions in *The Art of War*, that winning 100 battles by fighting the enemy requires immense skill and intelligence, but winning 100 battles without fighting a single battle is the real art of war which avoids the exorbitant costs of fighting 100 battles. This ideal strategy where one could win without fighting; accomplish the most by doing the least, stems from the philosophy of Taoism, the ancient tradition of knowledge that fostered both the healing arts and the martial arts in ancient China.

No Merits; Too Much Cost

If the client does call the firm our goal in responding is to show:

A. The case has no merit. And even if it has some merit:

B. The uncertainty, downside risk and cost of an uphill battle against well drafted legal documents make the case, e.g. of defending inappropriate conduct, not worth it under a cost benefit analysis.³

Business Law Practice

In other ways a business lawyer is not like the Maytag repairman. Most business lawyers are not lonely, bored or without something to do. We are not just “sitting there” waiting for a client to call. The best lawyers are in high demand because clients want the best lawyer they can find and afford and who is available.

The Pipeline. An established business law firm may have a backlog of cases going through the “Pipeline.”⁴ The better the firm, the greater the odds are that a Pipeline exists. Many cases in the Pipeline will have deadlines for “Closing,” e.g. the purchase or sale of a business, or for “filing,” i.e. to file a legal pleading with the court or in arbitration.

The Work. Whether the cases in the Pipeline involve transactions or litigation, the completed work the client sees is the tip of the iceberg of the work required and performed by the lawyer (the “Work”). For example, the attorney

³ For more on this topic please see my article “Follow the Money” available on our website at azbuslaw.com or this office thefirm@azbuslaw.com.

⁴ In some ways a law office is like a printing company where various jobs are processed in order on the printing press and our job will get done after the work ahead of us is done.

may spend hours in document review, legal research and analysis to prepare and formulate options for a 45 minute client meeting.

Because of the Pipeline or Work the attorney may not be immediately available, and even if the attorney is available calling at the last minute does not serve the case or the client because good legal Work takes time and dedication.

Dr.'s Office versus Hospital or Emergency Room Surgery

Law is like medicine in that preventative actions are much cheaper and can be much more effective than dealing with problems already developed. I've heard it said that "It is easier to make a necklace than to untangle one." Well drafted contracts can "save the day" in preventing disputes, strengthening a legal position and avoiding the time and cost of legal entanglement.⁵ Under a cost-benefit analysis, "preventative law," like preventative medicine, is a "no-brainer."

Conclusion

As represented by the Maytag Repairman quality is the best policy. Having good legal work in place early on can prevent large legal problems later or make them more manageable. It is also an effective strategy in "The Art of War." But, because most lawyers are not like the Maytag Repairman in having nothing to do, acting proactively and preventatively can ensure the attorneys you want are available when you need them and have time to do the Work well.

⁵ For more on this topic please see my "Little Speeches" article on our website at azbuslaw.com or you may obtain a copy from the firm at thefirm@azbuslaw.com.